IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7526 OF 2006

Dhondiram Shankar Masal & anr. Petitioners
versus
Nana Narayan Masal Respondent

Mr.A.V.Anturkar i/by Sugandh Deshmukh for petitioners.

Surel S. Shah for respondent.

CORAM : A.P.DESHPANDE, J.

DATE : 13th December 2006

PC :

1. The writ petition is filed by the original defendant nos.1 and 2 who are appellants before the First Appellate Court, whose application under Order 41, Rule 27 of CPC for leading additional evidence has been rejected.

2. It is the case of the petitioner that certain important documents which have bearing on the dispute in issue, were kept in an old trunk by the father of the petitioner and the said trunk was dumped on the loft and hence the said documents were not within the knowledge of the

petitioner since filing of the suit till moving of the application under Order 41, Rule 27. The additional evidence was sought to be led in the First Appellate Court and the First Appellate Court taking a possible view of the matter has rejected the application.

3. Perused the order. It does not call for any interference. However, as I do not propose to interfere in the order passed by the First Appellate Court, I keep all the questions open raised by the petitioners in the present petition, to be agitated in the second appeal, if permissible and if filed. One of the grounds raised by the learned counsel for the petitioner in this petition is that the petitioner had moved two applications; one for amendment of the written statement and another under Order 41, Rule 27 of CPC.. He then contends that the application for amendment ought to have been taken prior in point of time or at the time of hearing along with the application under Order 41, Rule 27 of CPC.. Having not done so, the learned First Appellate Court has committed a patent illegality.

. On the contrary, learned counsel for the

respondents submits that the application for amendment was never pressed either at the time of passing the impugned order or before taking up the application under Order 41, Rule 27 for hearing. Hence, the First Appellate Court has not committed any illegality.

4. If this be the position, no fault can be found with the First Appellate Court in deciding the application under Order 41, Rule 27 before deciding the amendment application. Writ Petition is, therefore, summarily dismissed.

(A.P.DESHPANDE, J.)